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# ANSWERS,

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*Thomas Happer and other Tennents of Burns-land  
and Lumsdeans-land in Coldinghame.*

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*The Petition given in be Jean Home Relict of the  
Deceast John Home of Plendergeist.*

**T**HE said *Jean Home* and Two Messengers being accompanied with a number of Armed Men, having in Harveſt laſt come to the Lands of *Burns-land*, and *Lumsdeans-land* in *Coldingham*, and brought a great many Carts and Waines alongſt with him, and upon pretence of Letters of Poinding of the Ground at the ſaid *Jean Homes* Instance, having Poinded the whole Corns ſtanding in Stoucks upon the ground for payment, as they pretended of Eight or Nine Years bygone valued Bolls due out of theſe Lands; Albeit the ſaid *Jean Home* had no ſhadow of Right to Execute any ſuch Poinding, but did it out of a Malicious and Capricious Humour of purpoſe to caſt theſe Lands waift, which is evident from this, that ſhe did not offer to poind the Teinds of any other Lands, albeit ſhe might have had the ſame pretence to poind the whole Teinds of the Parochin of *Coldingham*, that ſhe had to poind the Teinds of theſe Lands ſhe having no more Right to poind the Teinds of theſe Lands, then the Teinds of all the Paroch, to which ſhe nor her Husband never had any pretence of Right: And the Tennents being ſurpriſed with this unjuſt procedure, being a thing very unexpected to them: And they ſeing the Carts and Waines ready to take away their Corns, they to ſave their Corns from being deſtroyed and carryed away, were forced to give Bond every one of them to the value of their whole Cropt of Corns which was poinded.

The Tennents having raiſed a Complaint before the Council, Againſt the ſaid *Jean Home* the Meſſengers and their Accomplices. for a high Riot and manifeſt oppreſſion upon the account of the foreſaid Illegal Poinding, and for delivering back the Bonds that had been ſo unjuſtly extorted from them: The Council did remit the point of Right to Your Lordſhips to be diſcuſſed ſummarly, Reſerving to themſelves the conſideration of the Riot.

The precise queſtion then being in relation to the Legality of the poinding, It was alledged for the Tennents that the poinding was moſt unjuſt and illegal for theſe Reaſons, Firſt, *Plendergeiſt* himſelf had never any Right to theſe Lands or Teinds. 2. The Lady was not infeſt in the Teinds of theſe Lands, and ſo could not poind the ſame for any part of her Annuity. 3. The right from her Husband being only of the Teinds of *Coldingham* ſtanding by Right of Wodſet in her Perſon, without ſpecifying the Teinds of any particular Lands, if ſhe had been infeſt in the teinds as ſhe was not, yet the poinding could not have proceeded before it had been cleared

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by Declarators to what teinds she had Right. 4. Neither the Heretors nor possessors of these Lands were called in the Decreet of pointing of the ground. 5. The Teinds of the Lands being valued, there could be no pointing of the ground for valued Bolls. 6. They pointed the stock for the valued Bolls without any previous sentence liquidating the price of the said Bolls. 7. They did not point for the last year, 1695. but for the valued Bolls which is alledged to be due for eight or nine years preceeding. 8. They pointed the whole stock of the Tennents Corns for the said bygone valued Bolls who were no wayes lyable for the same; They never having medled with the Tenids, the Lands being set in *Akerdale*, Reserving the Teind which was alwise drawn by the Master. So that there was never a more unjust and illegal pointing heard of, upon which your Lordships found the pointing not Legal. So as to retain the Bonds granted be the Tenents, and therefore decerned the said *Jean Home* to return and deliver up the Tennent, Bonds, Reserving the Right of either partie as accords.

The said *Jean Home*, having given in a Petition reclaiming against the Interloquitor, but contains nothing of New but what was formerly expressly alledged, and under your Lordships consideration the time of the passing of the said Interloquitor, and seeing she repeats the same defences the Tennents are obliged to make the same Answers. And first whereas it is alledged that be the Remit of Council the point of Right is to be discuss be your Lordships, and that therefore *Sir Patrick Home* ought to debate his Right without regard to the pointing. It is Answered, that the alledgance is absolutely groundless, and the complaint being in Relation to the unjust and illegal pointing; the remitt can only be understood of the point of Right in relation to the legalitie of the pointing, which is the subject of the Complaint and is farther cleared from the express words of the remit by which the Council reserved to themselves the consideration of the Ryot after the point of Right is discuss; and also it is absurd to pretend that the point of Right should be understood of *Sir Patrick's* Right, his Right not being at all in the field, he not being a pursuer in that complaint; which is only raised at the Tenents instance for the unjust and illegal pointing; and if the Lady have any pretence of Right to the Teinds she may insist against *Sir Patrick* as intrometter with the same as accords, who no doubt will sufficiently clear his own Right.

2. Whereas it is alledged that if the Lady should be obliged to deliver up the bonds it will prejudice her Right and possession, and the Tenents being lyable to her for the said Teinds; and seeing she is willing instantly to debate her Right the bonds ought not to be restored. It is Answered. 1. That the pointing being illegal, as is evident for the reasons forsaid, and as your Lordships has already found, and the Ladies Procurators has not the confidence to contravert it, then it must necessarily follow that the Bonds ought to be restored. 2. It is absolute Nonsense to pretend that the Tennents should be obliged to debate the point of Right to the Teinds. Seeing they are not concerned in the Right, all their concernment, being to be restored and repaired against the Illegal pointing. 3. It is also great nonsense to alledge that the Tenents should be lyable for the valued Bolls, seeing they never intromitted with the Teind. The same being alwise drawn by the Master, far less could their whole stock of Corns be pointed for the bygone valued Bolls.

3. Whereas it is alledged that the Teinds were constitute by Infeftment, and so the subject of a summar Pointing of the Ground, and that the Pointing was not compleated, but only by Pointing a rip of Corn, and that there was nothing carried away, but the Tenents gave Bonds, which were consented to by *Westerstone* their Master, and that any Title is sufficient to assoilzie from a Spuilzie, and that albeit where a Title of Intromission is invalide, Your Lordships will appoint Restitution; yet where the Party intrometter can clear their Right, in such a case Restitution ought not to be made. It is Answered. 1. That the Question is not here, whether these Teinds are conveyed by Infeftment or not, or whether they be the subject of a summar Pointing? But whether the Pointing it self was Legal or



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or not? 2. However Teinds may be conveyed by Infeftment, yet certainly, there can be no poinding of the Ground for valued Bolls, feing they have not a *Fundus* to be poinded: But more especially, the Stock of Tenents' Corns can never be poinded for valued Bolls, who had no intromiffion with the Teinds: 3. The poinding was compleated, as appears by the execution of Poinding produced, which instructs that they poinded for the valued Bolls the year 1694, and 7 or 8 years preceeding: And there is no other way of poinding of Corns in Stoucks and Stacks but by a rip; And the Lady and her Accomplices, having Carts and Waines present would have instantly carryed the famen away, if the Tenents had not given their Bonds to redeem their Corns.

4. Its absolutely false, That *Westreston* whose Wife Liferents a part of the Lands did consent to the Tennents giving Bond, neither could he do it, for not only was he denuded of the Right of drawing the Teinds, but the Rents was sequestrate for the use of his Creditors: And *Robert Brown* of *Blackburn* appointed Factor by Your Lordships is a Complainer in this Procefs with the Tennents.

5. Albeit a Colourable Title may Affoilzie from a Spuilzie, Yet the Lady had not so much as a Colourable Title in this case to proceed in such an Illegal poinding And the Tennents being unjustly poinded, as said is, and Bonds extorted from them upon that Account, they as *spoliati ante omnia sunt restituendi*.

6. It being acknowledged, That where a parties Title of Intromiffion is Invalid Restitution ought to be made, then *ex concessis* Restitution ought to be made in this case; Seing it was most unjust and unwarrantable for the Lady to poind the Stock of the Tennents Corns.

7. Albeit the Lady had a Right to these valued Bolls as she has not, nor are the Tennents obliged to debate the point of Right, yet the poinding being Illegal as said is, it necessarily follows that the Lady ought to restore the Bonds, and if such an unjust and illegal poinding as this should be suffered not only, these Lands would be casten absolutely waste; But the Lady by the same Reason, may poind all the Lands within the Parochine of *Coldingham* for her Annuity.

In Respect whereof, The Desire of the Petition as most Groundless and Absurd ought to be Refused, and the Decreet finding the poinding to be Illegal, and ordaining the Bonds to be Restored ought to be Extracted.

Handwritten signatures and initials, including what appears to be 'J. M.' and 'J. B.' with various flourishes and marks.